

Senate Study Bill 1296

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT
BILL BY CO=CHAIRPERSONS
COURTNEY AND LUNDBY)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for energy performance-based contracts for
2 certain public entities and public educational facilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2098XC 81
5 rn/gg/14

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1 1 Section 1. NEW SECTION. 297A.1 STATE POLICY.
1 2 The general assembly finds that investment in energy
1 3 conservation measures by public facilities can reduce the
1 4 amount of energy consumed by the facilities and produce both
1 5 immediate and long-term cost savings. It is the policy of
1 6 this state to encourage school districts, area education
1 7 agencies, community colleges, public universities,
1 8 municipalities, counties, and state institutions to invest in
1 9 facility technology infrastructure upgrades and energy
1 10 conservation measures that reduce energy consumption, produce
1 11 a cost savings, or improve the quality of indoor air, or when
1 12 economically feasible, to build, operate, maintain, or
1 13 renovate public facilities in a manner which will minimize
1 14 energy consumption or maximize energy savings. It is
1 15 additionally the policy of this state to encourage
1 16 reinvestment of energy savings resulting from energy
1 17 conservation measures and facility technology infrastructure
1 18 upgrades into additional and continued energy conservation
1 19 efforts. The department of natural resources, in consultation
1 20 with the department of education, shall adopt rules pursuant
1 21 to chapter 17A for the administration of this chapter.
1 22 Sec. 2. NEW SECTION. 297A.2 DEFINITIONS.
1 23 As used in this chapter, unless the context otherwise
1 24 requires:
1 25 1. "Energy conservation measure or facility technology
1 26 infrastructure upgrade" means a training program, facility
1 27 alteration, or equipment to be used in new construction,
1 28 including an addition to an existing facility, that reduces
1 29 energy costs and includes, but is not limited to, any of the
1 30 following:
1 31 a. Insulation of the facility structure or systems within
1 32 the facility.
1 33 b. Storm windows or doors, caulking or weather stripping,
1 34 multiple-glazed windows or doors, heat-absorbing or heat=
1 35 reflective glazed and coated window or door systems,
2 1 additional glazing, reductions in glass area, or other window
2 2 and door system modifications that reduce energy consumption.
2 3 c. Automated or computerized energy control systems
2 4 including related software-required network communication
2 5 wiring, computer devices, wiring and support services for
2 6 building maintenance or delivery of energy conservation
2 7 services. Such energy control system technology
2 8 infrastructure may be used, as applicable, for other public
2 9 corporation technology needs. Other technology infrastructure
2 10 improvements may be implemented if the cost is supported by
2 11 the energy savings generated by other energy conservation
2 12 measures or facility technology infrastructure upgrades.
2 13 d. Heating, ventilating, or air conditioning system
2 14 modifications or replacements.
2 15 e. Replacement or modification of lighting fixtures to

2 16 increase the energy efficiency of the lighting system which,
2 17 at a minimum, shall conform to the applicable state or local
2 18 building code.

2 19 f. Energy recovery systems.

2 20 g. Renewable energy systems, such as solar, biomass, and
2 21 wind.

2 22 h. Devices that reduce water consumption or sewer charges.

2 23 i. Any measure not otherwise defined that produces energy
2 24 cost savings or British thermal unit reductions.

2 25 2. "Energy cost savings" means a measured reduction in
2 26 fuel, energy, or operation and maintenance cost savings
2 27 created from the implementation of one or more energy
2 28 conservation measures or facility technology infrastructure
2 29 upgrades when compared with an established baseline for
2 30 previous fuel, energy, or operation and maintenance costs.

2 31 3. "Energy performance-based contract" means a contract
2 32 for the recommendation and implementation of energy
2 33 conservation measures or facility technology infrastructure
2 34 upgrades which includes, at a minimum, all of the following:

2 35 a. The design and installation of equipment to implement
3 1 one or more energy conservation measures or facility
3 2 technology infrastructure upgrades, and, if applicable,
3 3 operation and maintenance of such measures or upgrades.

3 4 b. The amount of any actual annual energy and operational
3 5 cost savings. The amount shall be guaranteed in the contract
3 6 by the qualified provider and verified by a professional
3 7 engineer or registered architect who is not employed or has
3 8 contracted with the qualified provider. The verification
3 9 shall occur using a process established by the department of
3 10 natural resources.

3 11 4. "Energy performance-based evaluation" means performance
3 12 of an energy audit, data collection, or other related analyses
3 13 preliminary to the undertaking of energy conservation measures
3 14 or facility technology infrastructure upgrades, and
3 15 maintenance of project monitoring and data collection to
3 16 verify postinstallation energy consumption and energy-related
3 17 operating costs. The department of natural resources shall
3 18 establish performance guidelines that consider federal energy
3 19 management program guidelines. Any cost for support services
3 20 for building maintenance or delivery of energy conservation
3 21 services that will continue beyond the length of an energy
3 22 performance-based contract shall be identified specifically in
3 23 the energy performance-based evaluation.

3 24 5. "Maintenance cost savings" means auditable operating
3 25 expenses eliminated and future capital replacement
3 26 expenditures avoided as a result of new equipment installed or
3 27 services performed by the qualified provider.

3 28 6. "Public corporation" means a school district as
3 29 described in chapter 274, a community college as defined in
3 30 chapter 260C, a public university, city, county, or state
3 31 agency.

3 32 7. "Qualified provider" means a business or person that
3 33 has been qualified by the department of natural resources.
3 34 The department of natural resources shall adopt rules pursuant
3 35 to chapter 17A to establish a qualifications process. The
4 1 process shall consider accreditation by the national
4 2 association of energy service companies, certification by the
4 3 association of energy engineers, or professional licensure as
4 4 an engineer or registered architect in Iowa. A business or
4 5 person accredited by the national association of energy
4 6 service companies shall be qualified in Iowa.

4 7 Sec. 3. NEW SECTION. 297A.3 REQUESTS FOR PROPOSALS
4 8 EVALUATION.

4 9 1. Prior to entering into an energy performance-based
4 10 contract as provided in section 297A.4, a public corporation
4 11 shall announce a request for proposals. A request for
4 12 proposals shall be advertised for public bidding and let
4 13 publicly. The model request for proposals format developed by
4 14 the department of natural resources shall be made available
4 15 for use by public corporations. A public corporation shall
4 16 administer the public bidding and letting, requesting
4 17 innovative solutions and proposals for energy conservation
4 18 measures and facility technology infrastructure upgrades.
4 19 Proposals submitted shall be sealed. If the model request for
4 20 proposals format is not used, the request for proposals shall
4 21 include, at a minimum, all of the following:

4 22 a. Name and address of the public corporation.

4 23 b. Name, address, title, and telephone number of a contact
4 24 person for the public corporation.

4 25 c. Notice indicating that the public corporation is
4 26 requesting qualified providers to propose energy conservation

4 27 measures and facility technology infrastructure upgrades to be
4 28 provided pursuant to an energy performance-based contract.
4 29 d. Date, time, and place where proposals must be received.
4 30 e. Evaluation criteria for assessing the proposals.
4 31 f. Any other stipulations and clarifications the public
4 32 corporation may require.

4 33 2. The public corporation shall evaluate any sealed
4 34 proposal from a qualified provider. Sealed proposals shall be
4 35 opened by a designated member or employee of the governing
5 1 body of the public corporation at a public meeting during
5 2 which the contents of the proposals shall be announced. Each
5 3 person submitting a sealed proposal must receive at least ten
5 4 days' notice of the time and place of the public meeting at
5 5 which the public corporation proposes to award an energy
5 6 performance-based contract. The public corporation shall
5 7 analyze each qualified provider's estimate of the cost of
5 8 design, engineering, installation, maintenance, repairs, debt
5 9 service, conversions to a different energy or fuel source, and
5 10 postinstallation project monitoring, data collection, and
5 11 reporting. The evaluation shall include a detailed analysis
5 12 of whether the energy consumed or the operating costs, or
5 13 both, will be reduced. Selection of the qualified provider
5 14 shall, through either a request for proposals process or other
5 15 purchasing method, constitute selection of the best value
5 16 based on life cycle cost analysis of the component parts and
5 17 systems to the public corporation. The public corporation
5 18 shall enter into an energy performance-based contract.

5 19 Sec. 4. NEW SECTION. 297A.4 AWARD OF GUARANTEED ENERGY
5 20 COST SAVINGS CONTRACT.

5 21 1. A public corporation shall select a qualified provider
5 22 that best meets the needs of the public corporation based on
5 23 life cycle cost analysis. After completing its evaluation of
5 24 the proposals received pursuant to section 297A.3, the public
5 25 corporation shall provide public notice of the public meeting
5 26 at which it proposes to award an energy performance-based
5 27 contract. The public notice shall contain the names of the
5 28 parties to the proposed contract and the purpose of the
5 29 contract. The public notice shall be published at least ten
5 30 days prior to the public meeting. A public corporation may
5 31 enter into an energy performance-based contract with a
5 32 qualified provider if it finds, after evaluating the proposal
5 33 pursuant to section 297A.3, that the total amount the public
5 34 corporation would spend on the design, implementation,
5 35 financing, and performance management of the energy
6 1 conservation measures or facility technology infrastructure
6 2 upgrades and modernization measures recommended in the
6 3 proposal would not exceed the amount to be saved in either
6 4 energy or operational costs, or both, within a twenty-year
6 5 period from the date of installation of such measures or
6 6 upgrades, based on life-cycle costing calculations, if the
6 7 recommendations in the proposal are followed.

6 8 2. A public corporation may enter into a financing
6 9 agreement as provided in sections 473.19, 473.20, and 473.20A,
6 10 for the purchase and installation of energy conservation
6 11 measures or facility technology infrastructure upgrades and
6 12 modernization measures. Energy performance-based contracts
6 13 may extend beyond the fiscal year in which they become
6 14 effective, and may be automatically renewed annually for up to
6 15 twenty years.

6 16 3. A qualified provider shall be responsible for the
6 17 measurement and verification of the savings generated by the
6 18 energy conservation measures or facility technology
6 19 infrastructure upgrades and modernization measures. The
6 20 process to be used for the measurement and verification shall
6 21 follow the guidelines of the federal energy management
6 22 program. A public corporation shall have these savings
6 23 verified by a qualified independent third party on an annual
6 24 basis. The verification shall also include an annual
6 25 reconciliation of the guaranteed energy cost savings for the
6 26 life of any financing agreement obligations or until the
6 27 project is repaid from energy savings. The cost of this
6 28 verification shall be a part of the contract with the
6 29 qualified provider. The department of natural resources shall
6 30 establish the qualifications necessary for a business or
6 31 person to become a qualified independent third party. A
6 32 business or person accredited by the national association of
6 33 energy service companies shall be qualified in Iowa.

6 34 4. A selected qualified provider shall provide a one
6 35 hundred percent performance guarantee bond to the public
7 1 corporation for the installation and faithful performance of
7 2 the installed energy conservation measures or facility

7 3 technology infrastructure upgrades as outlined in the energy
7 4 performance-based contract.
7 5 5. A public corporation has the right to terminate an
7 6 energy performance-based contract at any time provided that
7 7 written notice to the qualified provider is provided at least
7 8 thirty days prior to termination. All qualified providers
7 9 shall include clear statements and requirements regarding
7 10 contract termination as part of the contract documentation.
7 11 The documentation shall clearly state the options of the
7 12 public corporation to satisfy the contract early and include
7 13 all associated costs. The documentation shall also state the
7 14 rights of a public corporation under a contract for
7 15 terminating the contract due to nonperformance, for exercising
7 16 rights pursuant to the performance guarantee bond, and for
7 17 listing all costs and responsibilities for payment of any
7 18 remaining debt associated with energy and operational savings
7 19 projects already implemented. The information and associated
7 20 costs described in this subsection shall be provided to a
7 21 public corporation before an energy performance-based contract
7 22 is approved.

7 23 6. An energy performance-based contract shall include a
7 24 written guarantee by a qualified provider that the amount of
7 25 any actual energy and operational savings shall be guaranteed.
7 26 The amount must also meet or exceed the total annual contract
7 27 payments, including financing charges, made by the public
7 28 corporation over the life of the contract. A qualified
7 29 provider shall reimburse a public corporation for any
7 30 shortfall of guaranteed energy cost savings projected in the
7 31 contract. Actual savings documentation shall be reconciled on
7 32 an annual basis as provided in the contract. Any savings
7 33 shortfall shall be made whole by the qualified provider within
7 34 sixty days. Excess documented and mutually agreed upon
7 35 savings may be carried over to future years. A qualified
8 1 provider shall provide the public corporation with a one
8 2 hundred percent performance guarantee bond for installation
8 3 and retrofit projects. A qualified provider shall guarantee
8 4 the savings for the length of the contract and shall also
8 5 provide the guaranteed performance bonds on an annual basis
8 6 renewed each year for the term of the contract. An energy
8 7 performance-based contract may provide for payments over a
8 8 period of time, not to exceed twenty years.

8 9 7. A public corporation shall not have any state financial
8 10 assistance or any appropriations or reimbursements reduced as
8 11 a result of energy and operational savings realized from an
8 12 energy performance-based contract for the installation of
8 13 energy conservation measures or facility technology
8 14 infrastructure upgrades.

8 15 EXPLANATION

8 16 This bill allows public corporations, through a request for
8 17 proposals process, to enter into energy performance-based
8 18 contracts with qualified providers for purposes of undertaking
8 19 one or more energy conservation measures or facility
8 20 technology infrastructure upgrades. The bill provides that a
8 21 public corporation may enter into an energy performance-based
8 22 contract with a qualified provider if it finds, after
8 23 evaluating the proposal, that the total amount it would spend
8 24 on the design, implementation, financing, and performance
8 25 management of the energy conservation measures or facility
8 26 technology infrastructure upgrades recommended in the proposal
8 27 would not exceed the amount to be saved in either energy or
8 28 operational costs, or both, within a 20-year period from the
8 29 date of installation, based on life-cycle costing
8 30 calculations, if the recommendations in the proposal are
8 31 followed. The bill provides that a qualified provider shall
8 32 be responsible for the measurement and verification of the
8 33 savings generated by the energy conservation measures or
8 34 facility technology infrastructure upgrades. The bill
8 35 provides that a public corporation shall have these savings
9 1 verified by a qualified independent third party. The bill
9 2 provides that a public corporation has the right to terminate
9 3 an energy performance-based contract at any time provided that
9 4 written notice to the qualified provider is provided at least
9 5 30 days prior to termination.

9 6 The bill provides that an energy performance-based contract
9 7 shall include a written guarantee by a qualified provider of
9 8 the amount of any actual energy and operational savings. The
9 9 bill provides that a qualified provider shall reimburse a
9 10 public corporation for any shortfall of guaranteed energy cost
9 11 performance or payment projected in the contract and that
9 12 actual savings documentation shall be reconciled on an annual
9 13 basis as provided in the contract. The bill provides that a

9 14 qualified provider shall guarantee the savings for the length
9 15 of the contract and shall also provide guaranteed performance
9 16 bonds on an annual basis renewed each year for the term of the
9 17 contract. The bill provides that a public corporation shall
9 18 not have any state financial assistance or any appropriations
9 19 or reimbursements reduced as a result of energy and
9 20 operational savings realized from an energy performance-based
9 21 contract for the installation of energy conservation measures
9 22 or facility technology infrastructure upgrades.
9 23 LSB 2098XC 81
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